

Well, before the nominee was announced, President Biden gave a troubling hint. He said whomever he nominated to the Court would have to "have an expansive view of the Constitution," acknowledge rights that our founding documents leave unsaid, and guarantee specific outcomes in certain categories of cases. The President promised he would only nominate a judicial activist for the job.

So I could only support Judge Jackson if her record and testimony suggested President Biden actually made a mistake; that he had accidentally chosen a nominee who was not the kind of liberal activist that he promised.

But, unfortunately, Judge Jackson's record and testimony suggests she is exactly the kind of liberal activist that the President promised. In case after case, when statutory text, standards, or guidelines pointed in one direction, Judge Jackson set them aside and charted a course for a different outcome.

As a district court judge, the nominee heard the case of a liberal activist group challenging the Federal Government's authority to deport illegal immigrants. The statute in question plainly gave the Department of Homeland Security "sole and unreviewable discretion" to enforce the policy.

But, apparently, it didn't lead to the policy outcome Judge Jackson wanted. So she ignored the statute, sided with the activists, and used a nationwide injunction—a nationwide injunction—to impose her new policymaking on the entire country.

This was such a blatant act of judicial activism that even the liberal DC Circuit overturned her ruling.

Or take another case involving a fentanyl trafficker. If you read the initial trial transcripts, Judge Jackson editorialized and expressed regret that the law forced her to punish him somewhat harshly. She literally apologized to this self-described "kingpin" that she wasn't allowed to go softer.

But the next time she saw this criminal at a compassionate release hearing, Judge Jackson was ready to legislate from the bench to give him the sentence she wished that she could have given him before.

Even after the judge explicitly acknowledged the First Step Act was not retroactive, she tortured its compassionate release provisions to make it retroactive anyway.

The fentanyl kingpin will be coming soon to a neighborhood near you, thanks to Judge Jackson. Congressional intent was no match for Judge Jackson's intent.

And then there is Judge Jackson's troubling record in a variety of cases involving child exploitation. On average, where these awful crimes are concerned, Judge Jackson's peers on the Federal bench fall within the stiff sentences Congress prefers a third of the time. But in 11 cases, Judge Jackson didn't fall within the guidelines even once.

At her confirmation hearing last month, the Judiciary Committee gave Judge Jackson a chance to clear up the activist track record. The nominee did not reassure.

She repeatedly declined to answer why her discretion slanted so dramatically and consistently in the direction of going soft on crime. She just kept repeating that she had the discretion. Clearly, what Senators wanted to know is why she used the discretion the way she did.

Judge Jackson did tip her hand on a few occasions. She acknowledged that her ignoring the guidelines amounted to "making policy determinations." Another time she referenced her personal "policy disagreements" to explain her jurisprudence.

So if you look at her sentencing transcripts, that is exactly right. Not only did the judge herself make frequent reference to her "policy disagreement" with the guidelines, but you can see the prosecutors in her courtroom knew they had to acknowledge her bias as well before arguing that she should finally get tough in their particular case. But always in vain, of course, because she never got tough once—not once—in this area. But prosecutors knew what policy bias they were going to get when they showed up in Judge Jackson's courtroom.

Of course, this is exactly, precisely what we do not want judges doing.

Senate Republicans gave the judge many opportunities to reassure, but in many cases, the nominee just dug deeper. At one point, the judge even echoed an infamous quotation from one of the most famous judicial activists in American history, the archliberal Justice Brennan used to say the most important rule in constitutional law was the "Rule of Five"—the "Rule of Five."

And Judge Jackson told the Senate "any time the Supreme Court has five votes, then they have a majority for whatever opinion they determine."

That is judicial activism summarized in one sentence.

So to summarize, Judge Jackson's nomination started off on the wrong foot because President Biden had promised he would only nominate a judicial activist. I hoped that maybe the judge's record and testimony would persuade us otherwise. Maybe she would persuade the Senate that she understands the proper judicial role. Unfortunately, what happened was just the opposite.

I opposed Judge Jackson's confirmation to her current post last year over these very same concerns, and this process has only made those concerns stronger.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The majority whip.

NOMINATION OF KETANJI BROWN JACKSON

Mr. DURBIN. Mr. President, I listened to the Republican leader speaking about the Supreme Court nominee Judge Ketanji Brown Jackson, who is coming before the Senate either today or tomorrow, we hope, for a confirmation vote. We have solid support for her nomination on the Democratic side and three Republican Senators who have announced that they will join us to make it a bipartisan majority in her favor.

She is deserving of this. She has an extraordinary background. She has the kind of resume that every lawyer would dream of: to graduate from Harvard Law School and then to clerk at every level of the Federal judiciary, including clerk to the Justice she hopes to succeed, Stephen Breyer; and then to serve on the Sentencing Commission, which is considered one of the more prestigious assignments, trying to rationalize the sentencing under Federal law; and then, of course, to serve on the district court in the DC district and to issue some 570 or 80 different opinions—written opinions—during that time; to be elevated to the DC Circuit Court, often called the second highest court in the land, where she served as well with distinction; and now to be the first African-American woman nominated to serve on the U.S. Supreme Court. It is an incredible record.

And she has made the rounds, as they say, in the Senate, visiting 95 or 96 different Senators, sitting down with them privately in their offices, answering any questions or concerns that they wish to express.

So I think she is an exceptional person. If you look at her record in all of these cases that she has handed down written opinions in—as I said, it is close to 600, and 100 of them were criminal cases where she imposed sentences, and some 10 or 15 of those cases which have been highlighted by her Republican critics, relating to the issue of the exploitation of children and pornography, in every single case, she imposed a prison sentence.

So to argue that she is soft on crime is to ignore that reality and to ignore the reality that she is endorsed—endorsed—by the largest law enforcement organization in America, the Fraternal Order of Police. She is endorsed by the International Association of Chiefs of Police and other noteworthy organizations, the National Organization of Black Law Enforcement, former prosecutors in the District of Columbia.

She has made it very clear that when it comes to applying the law to the facts, she does it with evenhandedness, so much so that she is respected by both sides of the table—the prosecutor's side of the table and the defense side of the table. That takes some doing, but she has achieved it. And

that is why her selection by President Biden is the right person for the right time for the right job. She is going to make history if we give her this confirming vote.

Now, I will tell you, when you publish some 580 to 600 opinions, you are going to find something in one of those opinions to raise. I listened carefully as Senator McCONNELL went to one of those opinions and drew his own conclusions. I would ask him to take care in accepting that as the fair way to measure a person. People often say that in the U.S. Senate—they ask us: Are you conservative or are you liberal or are you a fiscal conservative? Where do you stand on civil liberties? And people announce a position that they would like to believe they fit in. Then folks go back and look at your voting record and then ask: Well, how do you explain this, Senator? So in any given day, any given vote can raise a question as to a generalization about who you are and what you believe.

For instance, there was a time, as hard as it may be to believe, when people were suggesting amending the Constitution of the United States to make burning an American flag a violation—controversial. All of us revere the flag, but the notion of making this an amendment to the Constitution was a matter of great controversy and debate.

I remember it well in the Senate Judiciary Committee. I came down against it, saying that I revered the flag, but the principles and values behind it were equally or more important to me, and so I opposed flag burning and so did the Senator from Kentucky. Yes, the minority leader, Senator McCONNELL, opposed flag burning. The organization that agreed with our position was the ACLU. Now, can I generalize from that position which Senator McCONNELL took years ago that he is an ACLU-type of Senator? It would be wrong to draw that conclusion. There may have been other instances where he agreed with them, but it was rare.

What I am saying is, if you can take one vote and measure a Senator and realize that it falls short of being an accurate and honest measurement, the same thing is true for a judge, to take one opinion and say: Well, she ruled against President Trump on the issue of immigration, therefore, she is an activist liberal judge. She ruled as well for President Trump in other cases in his favor, and ruled against Democratic Presidents when they came up with their proposals before the court. So generalizations are not fair for her or for individual Members of the Senate based on one opinion, one vote, and that is what many are trying to do.

I will also tell you that this notion—and it pains me to even bring it to the floor, but I know it is going to come up in the next day or two—that she is soft on crime. As I mentioned, the law enforcement groups would not be endorsing her if they believed she was soft on crime.

And the notion that she is somehow, in the words of one Republican Senator—that her sentencing “endangers children,” that is painful because he said as much in front of her family. And I thought about that, how painful that must have been for her to hear those words. They are not true. And to take one or two situations, each of them unique in their factual circumstances, and to generalize in terms of her position on an issue of that gravity is fundamentally unfair. But we have done it, too, on the Democratic side, and I am going to be the first to admit, as I look back in history, there are things that should have been handled better when Republican nominees were before us.

And the majority of Republican Senators on the Senate Judiciary Committee, led by Ranking Member CHUCK GRASSLEY, I believe, were respectful and dealt with the judge in a fair manner. They asked tough questions, as they were expected to, but did not cross the line into personal attack.

There were three or four who broke that rule, as far as I was concerned, but the vast majority of Republican Senators were factual, were fair, and were basing their questions on sound legal questions before any Supreme Court nominee’s consideration. That I think will be talked about over the next couple days, as it should be.

TRIBUTE TO ERIK RAVEN

Mr. President, I want to take a moment to thank a former member of my staff who is an extraordinary man. He is smart, he gives wise counsel, and is truly devoted to this Nation. He worked for me for years.

I have worked with Erik Raven since 2014, when I became ranking member of the Senate Appropriations Subcommittee on Defense, and Erik was the chief clerk of the subcommittee. The title “clerk” is misleading. He was the brains and the operational force behind that subcommittee.

As my right hand, Erik led the massive and critically important effort to appropriate an average of \$700 billion a year for our national defense budget. Incidentally, that is about half of our Government’s annual discretionary spending—a big assignment—and Erik was the right person for that assignment.

As I mentioned before, my first introduction to the Senate was many years ago, as an intern to a former Illinois Senator, Paul Douglas. Douglas was a respected economist who joined the Marines at age 50—50—to defend democracy in World War II. He was badly wounded, became a war hero, and then was elected to the Senate.

Douglas famously said that you don’t have to be a wastrel to be a liberal. Douglas fought against waste in government because he understood that every misspent dollar weakens our national defense, every wasted dollar undermines our ability to build a better future. I think Paul Douglas would have liked Erik Raven.

Erik has been a stalwart ally in my efforts to advance our national defense capabilities while also protecting taxpayers’ dollars and investing in things like defense medical research and domestic sourcing of the components critical to our defense industrial base.

I traveled with Erik to more places than I can remember. There was one particularly eye-opening visit to a classified facility in a desert outside Las Vegas. You might say it was out of this world. I will also remember a trip we made to Poland and the Baltics in 2018, wherein we discussed the danger of the overreliance on Russian gas and other issues. Today, we see that playing out, tragically, in Ukraine.

It was also a relief to have Erik at my side. His deep institutional knowledge, his sense of humor, and his black bag full of secrets have served me and the committee and America well.

I know that Senator JON TESTER of Montana, the new chair of that same subcommittee, and other Senators with whom Erik worked share my high regard for him.

In his 20 years in the Senate, Erik has worked for Senator DIANNE FEINSTEIN, the late Senator Ted Kennedy, Robert Byrd, Senator Inouye, our former colleague Senator Mikulski, and our current chairman, Senator LEAHY. To countless Senate staffers along the way, Erik has been a mentor, a cheerleader, and always a friend.

In addition to his public service, he is a pilot and a black belt in karate. He enjoys golfing and running. He is a devoted husband to Ann, his wife, and father to Edward, his 7-year-old son.

Very soon, pending Senate approval, he will be our Nation’s next Under Secretary of the Navy.

The Senate’s loss is the Navy’s and America’s gain. I am confident that Erik will excel in his new challenge just as he has in the Senate. I wish him the very best of luck and thank him for his outstanding service.

FOR-PROFIT COLLEGES

Mr. President, it has been almost 6 years since the disastrous collapse of the infamous for-profit college chain ITT Tech.

At that time, ITT Tech was one of the largest chains of for-profit colleges in the country—130 campuses spread over 38 States and 40,000 students enrolled. It closed its campuses 2 weeks after the Federal Department of Education barred the parent company from enrolling any more students while using Federal student aid dollars.

I have come to this floor countless times to talk about the deceptive, predatory, desperate tactics of the for-profit college industry at large.

At the peak of its profitability, in 2000 to 2003, it was the hottest sector on Wall Street. Publicly traded shares in for-profit colleges rose 460 percent according to one analysis. In 2010, these for-profit colleges swept up more than \$32 billion in Federal student aid dollars. Hundreds of millions more flowed in through the GI bill. For ITT